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10/629,208	07/29/2003	Eiji Ozawa	8373.311US01	5663

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EXAMINER
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COOLMAN, VAUGHN

ART UNIT	PAPER NUMBER
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3618

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06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/629,208

Applicant(s)

OZAWA ET AL.

Examiner

Vaughn T. Coolman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 12-15 and 17-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/12/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "bucket seat" in claim 21 is used by the claim to mean "bench seat", while the accepted meaning is "seat for one person." The term is indefinite because the specification does not clearly redefine the term.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 6, 8, 10, 12, 13, 19-21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Infante et al (W.O. 97/09223) in view of Seider (U.S. Patent No. 2,435,021).**

**[claims 1, 21, and 24]** Infante discloses a four-wheeled vehicle (FIG 1) including:

a steering mechanism having a bar handle (41);

a front part having right and left front wheels (24 and 24'); .

a rear part having right and left rear wheels (24'' and 24''');

a driver's seat (21) disposed at said front part;

a rear passenger seat (21') disposed behind said driver's seat with a backrest for the driver therebetween and the rear passenger seat facing forwardly, the rear passenger seat being entirely positioned forwardly of forwardmost points of the rear wheels (FIG 3). Infante further shows the front and rear wheels defining a straight line at a level extending in a longitudinal direction through the uppermost points of the front and rear wheels.

Infante does not show the rear passenger seat having bulged portions allowing two passengers to sit thereon side-by-side. Seider teaches a vehicle with a bar handle steering mechanism, said vehicle having a rear passenger seat (a) disposed behind a driver's seat (145) wherein the rear passenger seat has bulged portions (portions rendering the seat wider than

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driver's seat) provided at opposite sides thereof for providing a larger width than the driver's seat, and the bulged portions would obviously allow the rear passenger seat to be occupied by two passengers sitting thereon side-by-side. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the vehicle shown by Infante with the rear passenger seat of Seider in order to provide the advantage of shortening the wheelbase of Infante's vehicle without reducing passenger capacity. Shortening the wheelbase would enhance handling even further.

Infante also does not show more of the driver's seat in side view being located below the straight line than above it. Infante does show the rear passenger seat being disposed at a higher level than the driver's seat. Examiner notes that one of the most common modifications to a four-wheeled vehicle is to replace the stock wheels with larger wheels. The vehicle shown by Infante could certainly accommodate larger wheels. Inspection of FIG 3 of Infante appears to show that a larger wheel size would locate the driver's seat at substantially the same level as the straight line, such that in side view, more of the driver's seat is located below the straight line than above it so long as some of the driver's seat is located above the straight line, said vehicle with driver and passenger would still maintain a low center of gravity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante with larger wheels in order to provide the advantage of higher speeds and visually pleasing customization as is common in the art.

In re claim 24 and the length and width requirements recited in lines 1-2, examiner notes that motorcycles come in many different lengths. For example a "pocket bike" is about 20 inches in overall length, whereas a "chopper" can be easily upwards of 16 feet in length.

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Furthermore, the size of a vehicle is a design choice that changes with the intended use of the vehicle. As such, the four-wheeled vehicle disclosed by Infante certainly meets the broadest reasonable interpretation of "having substantially the same overall length as a motorcycle".

**[claim 6]** Infante further shows the driver's seat and the rear passenger seat being opened at opposite sides thereof.

**[claim 8]** Infante further discloses the driver's seat being positioned at substantially the same level as the rear passenger seat.

**[claim 10]** Infante further shows a front cover and a windshield disposed in front of said bar handle, and a body cover disposed behind and below said driver's seat (see phantom outlines in FIGS 1 and 2).

**[claim 12]** Infante further shows a power unit part (16) disposed below one of said driver's seat and said rear passenger seat. However, he does not explicitly disclose said power unit part including a torque converter mechanism. Examiner notes that torque converters are old and well known in the vehicle arts for automatic transmissions and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with a torque converter between the engine and an automatic transmission in order to provide the advantage of increased torque during acceleration. The torque converter would be located between the differential (16) and the engine (9), thereby locating it below the level of all seats in the vehicle.

**[claim 13]** Infante further shows a transmission mechanism (16) for transmitting an output from said torque converter mechanism to said right and left rear wheels to drive said right and left rear wheels.

**[claim 19]** Infante further shows a power unit part (16) disposed below said rear passenger seat, said front wheel and said rear wheel providing a straight line extending through the vicinities of uppermost points thereof, said power unit part being disposed below said straight line.

**[claim 20]** Infante further shows a power unit part (16) disposed below said rear passenger seat. However he does not disclose a forwardly directed engine. It is old and well known to provide a forwardly directed engine (cylinder and motion of piston being along the longitudinal axis of the vehicle as best understood by the Examiner) for narrow, low vehicles similar to that disclosed by Infante and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante with a forwardly directed engine in order to provide the advantage of lowering the center of gravity to improve handling as compared to the vertically directed engine (9) that appears to be shown by Infante.

**Claims 2-5, 7, 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Infante in view of Seider and further in view of Ethier (U.S. Patent No. 4,662,468).**

**[claim 2]** Infante in view of Seider discloses all of the elements of the claimed invention as described above in re claim 1, and Infante appears to show the driver's seat including a front part having driver's footrests ( 15 and the floor of the vehicle above item 15) provided at opposite sides thereof. Infante does not disclose the driver's seat being formed to allow a driver to sit astride said seat. However, Ethier teaches a vehicle having bar handle steering mechanism

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and two front wheels (3, 4) including a driver's seat (5) being formed to allow a driver to sit astride thereon (FIG 2) with his feet rested on footrests (17, 18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with the straddle type seat of Ethier in order to provide the advantage of allowing a motorcycle type vehicle as shown by Infante to be driven in the position that a motorcycle driver is accustomed to, thereby increasing driver comfort.

**[claim 3]** Ethier further shows each of said footrests (17, 18) having a side edge projecting upwards (side body shown as a cut away in FIG 2).

**[claim 4]** The combination would disclose said right front wheel and said right rear wheel providing a first straight line extending therethrough, said left front wheel and said left rear wheel providing a second straight line extending therethrough, and said side edges being positioned within a region defined between said first and second straight lines when viewed in top plan (as shown by Ethier in FIG 1 or Infante in FIG 4).

**[claim 5]** Infante appears to show rear passenger footrests disposed behind said driver's footrests. Furthermore, both Ethier and Seider teach rear passenger footrests as shown in the figures of each inventor's disclosure.

**[claim 7]** In as much as applicant discloses a rear passenger seat that is formed to allow passengers to sit astride thereon, the combination of the rear passenger seats of Seider and Ethier with the vehicle of Infante also discloses such an arrangement. The motivation to provide a seat that a single rear passenger can sit astride in the combination is to provide a more equal left to right weight distribution in order to balance the vehicle better thereby improving handling.



**[claim 14]** Infante in view of Seider discloses all of the elements of the claimed invention as described above and Infante appears to show side support members (body panels shown in phantom) disposed on either side of the driver's seat. Ethier explicitly teaches first side support members (19, 20) disposed at opposite sides of said driver's seat. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with the side supports of Ethier in order to increase the safety and comfort of the passengers traveling in the vehicle.

**[claim 15]** Infante in view of Seider discloses all of the elements of the claimed invention as described above and Infante appears to show side support members (body panels shown in phantom) disposed on either side of the rear passenger seat. Ethier explicitly teaches second side support members (19, 20) disposed at opposite sides of said rear passenger seat. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with the side supports of Ethier in order to increase the safety and comfort of the passengers traveling in the vehicle.

**[claim 18]** Infante in view of Seider discloses all of the elements of the claimed invention as described above except for the driver's seat and the rear passenger seat cooperating with each other to provide a single seat. Ethier teaches a vehicle having bar handle steering mechanism and two front wheels (3, 4) including a driver's seat (5) and rear passenger seat cooperating with each other to provide a single seat. Ethier also teaches the driver's seat and passenger seat having a member disposed therebetween (column 4, lines 40-44). The member disposed therebetween would be the backrest or step-like feature created by the heightening of the rear section of the combination seat as taught by Ethier. It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with the seat of Ethier in order to provide the advantage of allowing a motorcycle type vehicle as shown by Infante to be driven in the position that a motorcycle driver is accustomed to, thereby increasing driver comfort and the heightening of the rear passenger seat would provide greater comfort to the passenger.

**Claims 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Infante in view of Seider and further in view of Saiki (U.S. Patent No. 4,804,221).**

**[claim 14]** Infante in view of Seider discloses all of the elements of the claimed invention as described above and Infante appears to show side support members (body panels shown in phantom) disposed on either side of the driver's seat. Saiki explicitly teaches first side support members (5, 6) disposed at opposite sides of a driver's seat. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus shown by Infante as modified by Seider with the side supports of Saiki in order to increase the comfort and stability of the driver of the vehicle.

**[claim 15]** Infante in view of Seider discloses all of the elements of the claimed invention as described above and Infante appears to show side support members (body panels shown in phantom) disposed on either side of the rear passenger seat. Saiki explicitly teaches second side support members (5, 6) disposed at opposite sides of a rear passenger seat (Saiki states that the supports can be for either driver or passenger seat portion – column 1, lines 50-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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modify the apparatus shown by Infante as modified by Seider with the side supports of Saiki in order to increase the comfort of the passenger traveling in the vehicle.

**[claim 17]** Saiki further discloses the backrest (4) disposed behind the driver's seat (7) being united with the first side support members (5, 6 – FIGS 1-4).

**Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Infante in view of Seider and further in view of Kurata (U.S. Patent No. 4,606,429).**

**[claim 22]** Infante in view of Seider discloses all of the elements of the claimed invention as described above in re claim 21 except for roll bars. Kurata teaches (see FIGS 1-3) a vehicle utilizing a similar seating configuration as that of Infante wherein a front roll bar (7) is disposed in front of a driver's seat (14) and in an upright position; a rear roll bar (9) is disposed behind a rear passenger seat (15) and in an upright position; and said front roll bar and said rear roll bar providing a straight line extending through the vicinities of top ends thereof, said straight line having a space defined therebelow to allow a driver and a rear passenger to sit on said driver's seat and said rear passenger seat, respectively, within said space. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle shown by Infante as modified by Seider, with the roll bars as taught by Kurata, since such a modification would provide the advantage of protecting the passengers from head injury in the event of a rollover of the vehicle. Examiner reminds applicant of the previous examiner's observation wherein it was noted that the ability of a driver and passenger to sit within the space defined above is entirely dependent upon the height of each person, furthermore, sitting posture could also play a role in this limitation.

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**[claim 23]** Infante further shows (FIG 3 ) the backrest being “positioned” at the same level as the waist of the driver sitting on the driver's seat.

### ***Response to Arguments***

Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

The allegation that Kurata is non-analogous art is incorrect. A worker of ordinary skill in the art would indeed look to another wheeled vehicle (three, four, two, or any number) for structural design cues. The type of seats is not recited in the independent claims anyhow. Applicant is obligated to present claims he believes to be patentable. If the straddle seat is the patentable subject matter, why is it not present in the independent claims?

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
vtc 06/18/07

Travis Coolman  
Examiner  
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